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No. 90-729

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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,
Petitioner,

v.

MADELINE MONTANO,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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SUGGESTION OF MOOTNESS

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The parties to this case have reached an agreement whereby all of the plaintiff's claims against the defendant are completely satisfied. This case is thus moot.[1] The petitioner, therefore, requests that the Court vacate the judgments of the courts below, and remand this case with directions to dismiss. *United States v. Munsingwear*, 340 U.S. 36, 39-40 (1950).[2]

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[1] With respect to the petition for a writ of *certiorari*, the settlement expressly provides that "CWA will inform the Court that as a result of this settlement agreement, this case has become moot." Settlement and Release Agreement ¶ 2.

[2] In *United States v. Munsingwear, supra*, the Court explained, "The establishment practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." 340 U.S. at 39 (footnote citing examples omitted).

The petition for *certiorari* in this case raises two issues that would have warranted this Court's attention, had this case not become moot.

The first question presented is whether the courts below erred in holding that a union breaches its duty of fair representation by committing an act of simple negligence in handling a contract grievance. The petition demonstrates that this holding of the courts below conflicts with the Court's recent decision in *Steelworkers v. Rawson*, —— U.S. ——, 110 S.Ct. 1904 (1990). Pet. 9-10. The petition goes on to suggest that, if *Rawson* does not completely resolve this issue, there exists a conflict between the Ninth Circuit on the one hand and the Seventh and Third Circuits on the other that may be resolved in *Air Line Pilots Ass'n v. O'Neill*, Sup. Ct. No. 89-1493. Pet. 10-12.

The second question presented concerns the correct allocation of back pay damages between unions and employers in hybrid § 301/fair representation cases, where the union has *not* refused to proceed to arbitration but has made an administrative mistake that allows the employer to avoid arbitration. The petition notes that this issue was not resolved in *Bowen v. U.S. Postal Service*, 459 U.S. 212 (1983), and demonstrates that the decisions below conflict with the reasoning of the *Bowen* opinion. Pet. 13-15.

Because the petition in this case raised issues worthy of this Court's consideration, the fact that the case became moot after the petition was filed cuts short the full process of appellate review. In these circumstances, we respectfully suggest that the proper course is to grant the petition for a writ of *certiorari*, vacate the judgments below and remand the case with directions to dismiss, *See, e.g., Onwuasoanya v. United States*, 488 U.S. 920 (1988).

Respectfully submitted,

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